TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 101.

JAMES T. WORMLEY, PLAINTIFF IN ERROR,

vs

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 18, 1899.

(17,468.)

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from the Court of Appeals of the District of Columbia	1	1
Caption	1	1
Petition for writ of certiorari	1	1
Memorandum: Writ issued and returned	4	4
Return of respondent	4	4
Motion to quash reassessment of taxes	8	8
Judgment	8	8
Appeal and order for citation	9	9
Citation	9	9
Clerk's certificate	10	10
Minutes of argument	11	11
Opinion	12	11
Judgment	16	16
Order allowing writ of error	17	16
Writ of error	18	17
Bond on writ of error	19	17
Citation and service	20	18
Clerk's certificate	21	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1900.

1 In the Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, Appellant,
vs.
JAMES T. WORMLEY. } No. 885.

Supreme Court of the District of Columbia.

JAMES T. WORMLEY
vs.
THE DISTRICT OF COLUMBIA. } No. 42471. At Law.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition for Writ of Certiorari.

Filed September 24, 1898.

In the Supreme Court of the District of Columbia.

JAMES T. WORMLEY, Petitioner,
vs.
THE DISTRICT OF COLUMBIA, Respondent. } At Law. No. 42471.

To the justice of said court, holding a special term at law:

The petition of your complainant, James T. Wormley, respectfully shows:

1.

That he is a citizen of the United States and a resident of the District of Columbia, and is the owner of a freehold estate in the following-described parcel of land, situated in the city of Washington, District of Columbia, and distinguished as sublot numbered one hundred and sixteen (116), in square numbered two hundred and seventy-four (274), sixty (60) feet on "U" street and twenty (20) feet on Thirteenth street; no other front.

2.

That heretofore, to wit, prior to the twenty-first day of July, A. D. 1896, the respondent, The District of Columbia, without authority in law, entered upon the tax and special assessment records in
2 its custody certain illegal taxes against the above-described property of your petitioner, namely, the sum of sixty-five dollars and twenty-four cents ($65.24), with interest from the twenty-first day of July, A. D. 1896, at the rate of ten per centum (10%) per annum, said charge purporting to be levied for the costs of the

following item, to wit, "curb and sidewalk on 'U' street;" said charge was in the name of William T. Walker and Samuel H. Wimsatt, said charge being levied for special assessments for improvements under the acts of Congress approved August sixth, A. D. 1890, and March the third, 1893.

3.

That afterwards, to wit, on the 17th day of April, A. D. 189–, your petitioner filed in this cause his petition for a writ of certiorari and therein prayed that the records of said assessments might be removed to this court for review, and that the same might be quashed as illegal and void, and the writ of certiorari was ordered issued on consideration of the said petition, and the said records were, upon return of the District of Columbia, removed to this court, and afterwards, upon review of said records, this honorable court, by its judgment rendered the 2nd day of May, A. D. 189–, declared said assessments illegal and quashed and annulled same; all of which appears more fully upon reference had to the said proceedings in certiorari, which are numbered 39839 upon the law docket of this court; and your petitioner upon information and belief says that said assessments were not quashed by reason of any imperfect or erroneous description of said land or parcels of land or because said assessment was not authenticated by the proper officer or for any defective or technical reason, but only because, as your petitioner is advised and believes, the assessment was substantially defective and included therein the absence of right in the Commissioners of the District of Columbia to levy said assessment; all of which will appear upon inspection of the said record in said cause.

4.

Your petitioner further says that, not regarding said judgment and wrongful assessment, and that said judgment was not based upon the grounds that said assessment was not properly authenticated, or that there was a defective return of notice, the Commissioners of the District of Columbia have caused to be entered upon the tax records of the said District a so-called reassessment of the said charge against said sublot, as the same is set forth in the first part of this petition, and the same now appears on the said records.

5.

Your petitioner avers, on advice of counsel, that the said judgment of this court in case numbered 39839 adjudicated said assessment to have been illegal, prayed as a part of the enforcement thereunder, and that said judgment not having been made and entered by reason of any technical or formal defect in said assessment,
3 the said Commissioners of the District of Columbia were without authority or jurisdiction to reassess said charge.

6.

Your petitioner further avers on information and belief that the

records in the custody of the respondent shows the following defects, which invalidates said assessment and said reassessment:

(*a.*) That the petitioner, as owner of the said land and parcels of land, did not request the doing of the work or the making of said improvements, and that he was not consulted as to its advisability, and that he had no opportunity to be heard upon the question or the costs of the utility and was not notified of the amount or amounts charged until after the work was completed and after said assessment had been made and had gone into effect as a lien on said property, which was not a reasonable time.

(*b.*) There was no notice given by advertisement, as required by law, of the work proposed to be done and for which the assessments herein complained of were made.

(*c.*) That the assessment and reassessment were made without authority in law and in excess of the jurisdiction of the Commissioners of the District of Columbia.

(*d.*) That the description of said parcels of land assessed is insufficient.

7.

Said charges are unpaid, and the respondent now threatens to sell and convey said land of your petitioner if same is not paid, in order to satisfy and pay said unlawful charges, whereby and in consequence whereof the title of your petitioner is clouded and he has no appeal.

Wherefore, the premises considered, your petitioner prays:

(1.) That a United States writ of certiorari may issue from this honorable court, commanding the respondent to certify immediately to this court, under its common seal, a copy of each and every record of the Commissioners of the District of Columbia relating in any manner to the reassessments for special improvements made against sublot one hundred and sixteen (116), in square numbered two hundred and seventy-four (274), in the name- of William T. Walker and Samuel H. Wimsatt, or in the name- of William T. Walker and S. H. Walker, and in the name of James T. Wormley, for "curb and sidewalk on 'U' street," as "permit work," under the supposed authority of the Commissioners of the District of Columbia, by virtue of the act of Congress approved April the 24th, A. D. 1896.

(2.) And that upon the coming in of said return all said illegal special assessments may be quashed and annulled by judgment of this court, and the respondent may be directed to cancel same on the records in its custody.

JOHN C. GITTINGS,
E. RICHARD SHIPP,
Attorneys for Petitioner.

4 DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, personally appeared John C. Gittings, one of the attorneys for the petitioner, who, being duly sworn according to law, deposes and says that he has read over the foregoing petition by him subscribed as attorney for petitioner and knows

the contents thereof; that the matters and things therein stated of his personal knowledge are true, and that those therein stated of information and belief he believes to be true.

JOHN C. GITTINGS.

Subscribed and sworn to before me this 24th day of September, A. D. 1898.

J. R. YOUNG, *Clerk*.
By W. E. WILLIAMS, *Ass't Clk*.

Endorsed: Let the writ issue as prayed. L. E. McComas, asso. J.

Memorandum.

Sept. 27, 1898.—Certiorari, writ of, issued and returned served.

Return of Respondent.

Filed January 31, 1899.

In the Supreme Court of the District of Columbia, Holding a Circuit Court for said District.

JAMES T. WORMLEY
vs.
THE DISTRICT OF COLUMBIA ET AL. } At Law. No. 42471.

Return of the respondent, The District of Columbia.

And now comes the respondent, The District of Columbia, and for a return to the writ of certiorari issued herein certifies to the court the following true and accurate copies of the records and parts of records in its possession bearing on the assessment for special improvements in said petition referred to, as well as the official knowledge of its officers touching the same, in the said writs mentioned, namely, to wit:

1. Copy of advertisement of intention to reassess.
2. Copy of record of reassessment.
3. Tax bill—reassessment.
4. Return of service of notice of reassessment.

OFFICE OF THE
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
WASHINGTON, *June* 30, 1896.

Special assessments for improvements abutting upon the following property having been canceled by the supreme court of the District of Columbia since the passage of the act of Congress approved April 24, 1896, providing for reassessment, viz: Petitioner, Patrick
5 Wade; square 622, sublot 39, for sewer, $60.94; petitioner, City Investment Company; square 778, sublots 62 to 67, inc., for paving sidewalk and curb, amounting to *all* $187.50; petitioner,

James M. A. Spottswood; square 623, sublot 127, for the improvement of I street, $70.46; petitioner, James T. Wormley; square 274, sublot 116, for curb and sidewalk, $65.24, notice is hereby given that the Commissioners of the District of Columbia, by virtue of authority vested in them by said act of Congress, propose to reassess the abovementioned property for the local improvements named. Parties interested are hereby notified that said Commissioners of the District of Columbia will give a hearing, at the District building, on Friday, the seventeenth day of July, 1896, at twelve o'clock m., to any and all persons who may desire to object to said reassessments being made.

JOHN W. ROSS,
GEORGE TRUESDELL,
CHARLES F. POWELL,
Commissioners of the District of Columbia.

Published in the Evening Star June 30, July 1st, 10th, and 11th, 1896.

Official copy.

W. TINDALL, *Sec'y.*

No. 104,009.

SPECIAL ASSESSMENT OFFICE,
WASHINGTON, D. C., *July 20th*, 1896.

To the honorable Commissioners of D. C.

GENTLEMEN: I have the honor to submit for approval the following reassessment for curb and sidewalk on U street in front of square 274, under the act of Congress approved April 24, 1896, authorizing reassessments for improvements and general taxes, the assessment for said improvement having been quashed by the supreme court of the District of Columbia on the 2nd day of May, 1896, because of want of proper notice, as required by law:

Total cost of the work	$130.48
One-half to be reassessed against abutting property	65.24

Total frontage of abutting property, 60 lineal feet.

Rate per front foot ..... .430426

Very respectfully,
(Signed) J. W. DANIEL,
Special Assessment Clerk, D. C.

6 No. 104,009.

Amount reassessed against abutting property, being for one-half of the total cost of curb & sidewalk on U street, square 274, in the city of Washington, District of Columbia, pursuant to act of Congress approved April 24th, 1896.

Lot.	Feet abutting on street.	Feet abutting on work.	In name of—	Amount.
				Dollars. Cts.
Sub 116.....	60	60	Wm. T. Walker & Samuel H. Wimsatt.	65 24

No. 104,009.

OFFICE OF THE
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
WASHINGTON, D. C., *July 20th*, 1896.

We hereby certify that the foregoing reassessment is made by us under the act of Congress approved April 24, 1896, entitled "An act to authorize reassessment for improvements and general taxes in the District of Columbia, and for other purposes:" that it is based upon a statement of the cost of the work upon which the original assessment was made, prepared by us and filed in our office: that it — levied upon property abutting upon the improvement: that it is prorated according to the frontage of the property in question, and that it does not exceed one-half of the total cost of the labor and materials employed in said work. We further certify that the assessment for the foregoing improvement was quashed and set aside by the supreme court of the District of Columbia on the 2d day of May, 1896, by reason of want of proper notice as required by law.

(Signed) JOHN W. ROSS,
(Signed) GEO. TRUESDELL,
(Signed) CHAS. F. POWELL,
Commissioners of the District of Columbia.

Endorsed: Sp'l ass't office. Action. July 20th, 1896. Respectfully forwarded to the honorable Commissioners of D. C. (Signed) J. W. Daniel, sp'l ass't cl'k, D. C. Aug. 11, 1896. Returned by order. (Signed) W. Tindall, sec't'y. No. 221,684. C. O. No. —. Engineer dep't, 189–. No. 130,673. Special assessment division. Washington, D. C., July 20th, 1896. Daniel, J. W., sp'l ass't cl'k, D. C. Reassessment against sublot 116, square 274, for curb and sidewalk on U street, under act of Congress approved Ap'l 24th, 1896.

7 *Reassessment under Act of Congress Approved April 24th, 1896.*

Pay to the collector of taxes, D. C.
Book 1.
Folio 7.

Special assessment office, 464 La. Ave. N.W., 2d floor.

WASHINGTON, D. C., *July* 20, 1896.

Wm. T. Walker & Sam'l H. Wimsatt:

Sublot No. 116, square No. 274, abutting 60 feet on U St., is charged upon the books of this office for special improvements as follows:

	Dollars.	*Cents.*
For work done under acts of Congress approved 6th August, 1890, and 3rd March, 1893:		
Curb, $39.41; sidewalk, $25.83; all instalments.	65	24
Interest at — per centum per annum from ——		
Costs		
Total		

Received payment,

——— ——, .
Collector of Taxes.

The acts of Congress relative to special assessments provide as follows:

One-third of the assessment shall be paid within 60 days from date of service of notice of assessment.

One-third shall be paid within one year from date of service.

One third shall be paid within two years from date of service.

Interest shall be charged at the rate of — per centum per annum from the date of service of notice upon all amounts that remain unpaid at the expiration of 60 days after date of service.

Should this property become subject to sale for any other assessment or tax whatsoever, then this assessment will become immediately due and payable; and the property may be sold therefor, together with interest and costs.

Should this assessment, or any part thereof, remain unpaid at the expiration of two years from the date of service of notice of this assessment, this property will be subject to sale thereof or with interest and costs.

These provisions of law will be enforced.

J. W. DANIEL,
Special Assessment Clerk, D. C.

N. B.—If this property no longer belongs to you, please return this notice to this office with the name and address of the present owner.

Improvements and repairs, northwest.

Auditor's Coupon.

Book ..

Folio...

Special assessment office.

....

....

Assessment for Work Done under Act Approved 3rd March, 1893.

Square.	Lot.	Dolls.	Cts.
Interest at — per cent. from ——, 189–			
Costs			
Total.....			

..... Instalment.

Work .....

For further return your respondent shows that all the papers herein referred to are part of the public records of the District of Columbia, and the several officers whose names and official designations appear on the several records and papers herewith filed were, at the respective times of such their action, the duly
8 constituted officers of the District of Columbia authorized and required by law to take such action, and your respondent prays the same benefit of the exhibits herewith filed as if the same were duly incorporated at length herein and made part hereof.

And on the return hereby made this respondent prays that the writ of certiorari issued herein may be quashed and the petitioner's petition dismissed.

THE DISTRICT OF COLUMBIA.
By S. T. THOMAS &
A. B. DUVALL, *Its Attorneys.*

Motion to Quash Reassessment of Taxes.

Filed February 1, 1899.

To the Supreme Court of the District of Columbia.

JAMES T. WORMLEY, Petitioner, *vs.* DISTRICT OF COLUMBIA, Defendant. } At Law. No. 42471. In Certiorari.

Now comes the petitioner, by and through his attorneys, and moves the court to quash the reassessment as shown by the returns filed in the above-entitled case.

JOHN C. GITTINGS,
E. RICHARD SHIPP,
Attorney for Petitioner.

S. T. Thomas, Esq., attorney for defendant.

DEAR SIR: Please take notice that we shall call up the above motion, in circuit court No. 1, on Friday, Febr'y 3rd, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

JOHN C. GITTINGS,
E. RICHARD SHIPP,
Attorneys for Petitioner.

Judgment.

Supreme Court of the District of Columbia.

SATURDAY, *February* 11, 1899.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

Decided by Justice Bradley.

JAMES T. WORMLEY, Petitioner, vs. THE DISTRICT OF COLUMBIA, Respondent. } At Law. No. 42471. Certiorari.

This cause coming on to be heard on motion of petitioner's counsel for judgment, and it appearing to the court upon inspection of the record returned by the respondent that the charges complained
9 of in the petition are illegal because said assessment and reassessment complained of were made without authority in law and in excess of the jurisdiction of the Commissioners of the District of Columbia, in that said assessment included an absence of right in said Commissioners to levy said assessment, it is this 11th day of February, 1899, adjudged by the court that the charge of $65.24 in the name of petitioner, assessed against sublot 116, in square No. 274, said property purporting to be assessed under authority of the Commissioners of the District of Columbia for "curb and sidewalk on U street," by virtue of act of Congress approved April 24, 1896, together with all costs, charges, and interest thereto, be, and the same hereby are, quashed and held for naught, and the respondent is hereby directed to cancel the same upon the records in its custody.

Order of Appeal.

Filed February 15, 1899.

In the Supreme Court of the District of Columbia, the 15 Day of February, 1899.

WORMLEY vs. THE DISTRICT OF COLUMBIA. } At Law. No. 42471.

The clerk of said court will please enter an appeal to the Court of Appeals from the judgment granted in the above cause and issue citation.

S. T. THOMAS,
Attorney for D. C.

In the Supreme Court of the District of Columbia.

JAMES T. WORMLEY vs. THE DISTRICT OF COLUMBIA. } At Law. No. 42471.

The President of the United States to James T. Wormley, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 15th day of February, 1899, wherein The District of

Columbia is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN R. YOUNG, *Clerk.*

10 Service of the above citation accepted this 15 day of February, 1899.

D. W. BAKER,
Attorney for Appellee.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the above and foregoing pages, numbered from 1 to 18, inclusive, to be a true and correct transcript of the record and proceedings in said court, as provided by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 42571, at law, wherein James T. Wormley is plaintiff and The District of Columbia is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 10th day of March, A. D. 1899.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 885. The District of Columbia, appellant, *vs.* James T. Wormley. Court of Appeals, District of Columbia. Filed Mar. 11, 1899. Robert Willett, clerk.

11 TUESDAY, *May 2d, A. D.* 1899.

THE DISTRICT OF COLUMBIA, Appellant,
vs.
JAMES T. WORMLEY } No. 885.

and

THE DISTRICT OF COLUMBIA, Appellant,
vs.
ANNA P. HOOVER ALLEN, ANDREW EASTWICK HOOVER, Charles P. Hoover, Fannie B. Byrne, Annie H. McAllester, Lulu L. Thornton, Heirs-at-law of Andrew Hoover. } No. 886.

The argument in the above-entitled causes was commenced by Mr. S. T. Thomas, attorney for the appellant, and was continued by Mr. D. W. Baker, attorney for the appellees, and by Mr. J. C. Gittings, attorney for the appellee in No. 885, and was concluded by Mr. A. B. Duvall, attorney for the appellant.

12 THE DISTRICT OF COLUMBIA, Appellant,
vs.
JAMES T. WORMLEY. } No. 885.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

1. The District of Columbia appeals from a judgment, rendered in a proceeding by *certiorari*, vacating the reassessment of certain special improvement taxes against sublot 116, in square 274, in the city of Washington. The lot, as described in the assessment proceedings and in the petition, fronts 60 feet on U street, and belongs to the petitioner. It was originally assessed under the act of August 6, 1890, and specially charged with the sum of $65.24, said amount being one-half of the cost of a curb and sidewalk constructed along said frontage. On a writ of *certiorari*, sued out by the petitioner, the supreme court of the District set aside said assessment on May 26, 1896, guided apparently, by the views expressed by this court in several analogous cases. Allman *v.* District of Columbia, 3 App. D. C., 8; Jones *v.* District of Columbia, 3 App. D. C., 26; District of Columbia *v.* Burgdorf, 6 App. D. C., 465.

13 2. In order to correct certain inequalities of taxation proceeding from these and other adverse decisions, and pursuant, it is said, to a suggestion made in the Burgdorf case, *supra*, p. 481, Congress passed an act to authorize reassessment for improvements and general taxes. This act, approved April 24, 1896, reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed, in all cases where general taxes or assessments for local improvements in the District of Columbia may hereafter be quashed

set aside, or declared void by the supreme court of said District, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied, to reassess the lot or parcel of ground in respect of such general taxes or the improvement mentioned in such defective assessment, with power to collect the same according to existing laws relating to the collection of assessments and taxes: *Provided*, That in cases where such taxes or assessments shall be quashed or declared void by said court, for the reasons hereinbefore stated, the reassessment herein provided for shall be made within 90 days after the judgment or decree of said court quashing or setting aside such taxes or assessments and any amount heretofore paid upon an assessment which has been declared void shall be credited the owner upon the reassessment made under the provision of this bill."

3. On June 30, 1896, the District Commissioners published, in a newspaper of the city of Washington, a notice of intention to reassess, against certain lots therein named—including that of petitioner—one-half the costs of the improvements that had been made. The owners were by name notified that the Commissioners would give a hearing at the District building, on Friday, July 17, 1896, at 12 o'clock, m., to any and all persons who might desire to object to said reassessments being made. From the return to the writ it appears that petitioner made no appearance; and, on July 20, 1896, the Commissioners reassessed the said lot with the charge of $65.24, the same being one-half of the actual cost of the improvement for which the original assessment had been made.

4. The provision of the general appropriation act of August 6, 1890, under which the work had been done, authorized the Commissioners to construct and improve curbs and sidewalks, when in their opinion necessary for the public health, safety and comfort. One-half of the actual cost was ordered to be assessed against the abutting property, and "levied *pro rata* upon said property according to its linear frontage, upon such terms and regulations as to notice to proprietors, and the methods and terms of such notice, as shall seem to the Commissioners right and proper, due notice of such terms and regulations being given by publication thereof in some newspaper published in the city of Washington for such time as said Commissioners shall prescribe." 26 Stat., 296.

In Jones *v.* District of Columbia, 3 App. D. C., 26, 39, it was held that to make an assessment under said act valid, notice must be given to the owner at some serviceable stage of the assessment proceeding, and not after its completion, in the form, practically, of a demand for payment. In District of Columbia *v.* Burgdorf, 6 App. D. C., 465, 478, 486, under an act which, like that of 1890, provided a uniform rate of assessment of the property abutting on the local improvement, it was held that notice to the owner was not necessary before the commencement of the work, but only before the settle-

ment and entry of the assessment upon the tax record. "Under that notice," it was said, "all questions and objections, not concluded by legislative action, may be taken and urged against the whole proceeding. This, in such case, would seem to be all the notice that the property-owner really requires or is entitled to receive." And in cases of assessments under such acts, it was also said, that the writ of *certiorari* will lie when required to effect substantial justice, but not to allow a party to avail himself of technical objections, or mere irregularities in the proceedings. *Idem*, p. 471.

The doctrine of the Burgdorf case, in respect of notice required, was reaffirmed in Parsons *v.* District of Columbia, 8 App. D. C., 391:

That case was appealed to the Supreme Court of the United States and the decision affirmed.

As stated in the opinion of the Supreme Court: "The proposition chiefly urged is, that, in all cases where proceedings are to be had for the taking of property, or to impose a burden upon it, the statute itself must provide for notice to the property-owner; otherwise it is unconstitutional; and that the statutes under which the present proceeding was had did not provide for notice to the owner of land to be assessed, nor give him an opportunity to be heard." In affirming the constitutionality of the act and the validity of the assessment, it was said: "There is a wide difference between a tax or assessment prescribed by a legislative body, having full authority over the subject, and one imposed by a municipal corporation, acting under a limited and delegated authority. And the difference is still wider between a legislative act making an assessment, and the action of mere functionaries, whose authority is derived from municipal ordinances. * * * When by the act of August 11, 1894, Congress enacted that thereafter assessments levied for laying water mains in the District of Columbia should be at the rate of $1.25 per linear foot against all lots or land abutting upon the street, road or alley in which a water main shall be laid, such act must be deemed conclusive alike of the question of the necessity of the work and of the benefits as against abutting property. To open such questions for review by the courts, on the petition of any or every property-holder, would create endless confusion. Where the legislature has submitted these questions for inquiry to a commission, or to official persons to be appointed under municipal ordinances or regulations, the in-
14 quiry becomes in its nature judicial in such a sense that the property-owner is entitled to a hearing, or to notice or an opportunity to be heard." Parsons *v.* District of Columbia, 170 U. S., 45, 52.

This doctrine, in respect of the power of Congress, *generally*, to determine the propriety of a public improvement, the lands benefited thereby which may be subjected to special assessment to meet the cost, and the rule of ascertainment, is not overthrown by the recent decision in Norwood *v.* Baker, 172 U. S., 269. That case, as we understand it, denies only the unlimited discretion of the legislature in the premises, and declares that the substantial benefits, actually received, constitute the boundary.

As was said by Mr. Justice Harlan, in delivering the opinion of the majority of the court:

"It is one thing for the legislature to prescribe it as a *general* rule that property abutting on a street opened by the public shall be deemed to have been specially benefited by such improvement, and therefore should specially contribute to the cost incurred by the public. It is quite a different thing to lay it down as an absolute rule that such property, whether it is in fact benefited or not by the opening of the street, may be assessed by the front foot for a fixed sum representing the whole cost of the improvement, and without any right in the property-owner to show, when an assessment of that kind is made or is about to be made, that the sum so fixed is in excess of the benefits received. In our judgment, the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, *to the extent of such excess*, a taking under the guise of taxation of private property for public use without compensation." *Idem*, p. 279. Parsons *v.* District of Columbia is not denied, but approved with this qualification of what might else be inferred from the decision: "If the costs of laying the water mains in question in that case had exceeded the value of the property specially assessed, or had been in excess of any benefits received by that property, a different question would have been presented." *Idem*, p. 295.

The authority of the actual decision in the Parsons case remains, therefore, unimpaired for our observance. Congress may order a local improvement, designate the property to be assessed on account of special benefits, and prescribe the proportion of the amount, and the rule of ascertainment, without preliminary notice to the owners to appear and be heard in respect of the propriety or character of the improvement, or the designation of the taxing district or area. See, also, Williams *v.* Eggleston, 170 U. S., 304, 311. But in doing this, Congress may not substantially exceed the actual benefits which the owner of the abutting or neighboring property shall receive from the improvement. And if it does, the assessment may be corrected, or vacated by injunction—which was the remedy applied in Norwood *v.* Baker—or through some other appropriate proceeding.

5. That the construction of sidewalks in the streets of the city of Washington is not only of advantage to the public, but also a special benefit, in some measure, to the abutting lots of private owners, seems to admit of no reasonable question; and the power of Congress to require their construction partly at the cost of such owners, when the charge imposed does not substantially exceed this benefit, is likewise undoubted. This being the case, notice to the owner is necessary, only, at some time before the settlement of the assessment against his property, in order that he may be heard, if he so desire, to question the constitutionality of the law, the facts in respect of the cost of the work, and whether the amount charged exceeds the special benefit received by him. District of Columbia *v.* Burgdorf, 6 App. D. C., 465, 481; Spencer *v.* Merchant, 125 U. S., 345, 357; Norwood *v.* Baker, 172 U. S., 296.

Original assessments under different acts of Congress have been

declared invalid for the failure to give some such notice, but not for the want of power to make them in a regular manner with due regard to the rights of private owners. Allman *v.* District of Columbia, 3 App. D. C., 8, 24; Jones *v.* District of Columbia, 3 App. D. C., 26; Burgdorf *v.* District of Columbia, 6 App. D. C., 465.

Where an assessment has been vacated upon such grounds, there can be no doubt of the power of the legislature to provide for a reassessment through a proceeding having due regard to the constitutional rights of the land-owner. Spencer *v.* Merchant, 125 U. S., 345; Norwood *v.* Baker, 172 U. S., 269, 293, 295.

The act of Congress, under which the reassessment complained of in this case was made, is recited above. That act not only directed a reassessment where one had been vacated for certain irregularities specifically mentioned, but also "for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied." The plain intention of the act seems to be, that, where there is a valid law ordering, or conferring the right to order, an improvement which is within the power of Congress, and imposing, or ordering the imposition of, a tax therefor, no property-owner shall escape the burden by reason of any irregularity in the original assessment, provided the Commissioners shall, within ninety days from the date of the judgment or decree annulling the same, reassess it in the proper manner. The reassessment of petitioner, as shown by the record of the proceedings exhibited in the return to the writ, appears to have been regularly made in conformity with the law. The Commissioners provided a rule regulating the giving of notice to the parties interested. That notice was given in this case to the petitioner to appear and present his objections to the proposed reassessment. The place, day and hour of the hearing were stated in the notice. He failed to appear and the Commissioners, after his default, proceeded to assess against his property the amount of one half of the actual cost of the improvements as ascertained by them. There is no claim whatever that the amount assessed exceeded the special benefit received from the improvement.

6. No exception was taken to the return made to the writ in the court below, but objection is now made to its sufficiency because it does not show the particular grounds upon which the first assessment was vacated. The contention is that it must therefore be presumed that the assessment was declared void because of the invalidity of the act of Congress conferring the power to make the improvement and to assess any part of the cost against the abutting lots. We pass by the question whether such an objection to the return should not have been specially made in the court below, where, if found well taken, the defect could have been amended.

It is also unnecessary to determine whether that judgment was an essential part of the proceedings in reassessment, for, if so, the necessity for its inclusion in the return was obviated by the action of the petitioner himself, who set it out in general terms as if a material part of his own case.

At any rate, the act of Congress under which that assessment was

made was not, and therefore could not have been held to be, unconstitutional. Consequently, the only ground upon which it could have been vacated was the want of the requisite notice, or the existence of some other irregularity in the proceeding—amounting to a denial of due process of law.

Having given the questions involved in this case the consideration which their grave importance to both public and private interests demand, we perceive neither want of power to make the reassessment nor substantial irregularity in the proceedings therefor. If we have mistaken the effect of the decision in Norwood *v.* Baker, or erred in its application to the facts of this case, we are gratified to know that the petitioner is not without remedy in the court of last resort.

For the reasons given, the judgment vacating the reassessment will be reversed with costs, and the cause remanded with direction to dismiss the petition.

Reversed.

16 TUESDAY, *June 6th, A. D.* 1899.

THE DISTRICT OF COLUMBIA, Appellant, *vs.* JAMES T. WORMLEY. } No. 885, April Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause vacating the reassessment be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court with direction to dismiss the petition.

Per MR. JUSTICE SHEPARD.

June 6, 1899.

17 THURSDAY *June 8th, A. D.* 1899.

THE DISTRICT OF COLUMBIA, Appellant, *vs.* JAMES T. WORMLEY. } No. 885.

On motion of Mr. D. W. Baker, of counsel for the appellee in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond, to act as a supersedeas, in the sum of two hundred and fifty dollars.

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between The District of Columbia, appellant, and James T. Wormley, appellee, a manifest error hath happened, to the great damage of the said appellee, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighth day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

19 Know all men by these presents the we, James T. Wormley, as principal, and Benjamin L. Wheeler, as surety, are held and firmly bound unto the District of Columbia in the full and just sum of two hundred and fifty dollars, to be paid to the said District of Columbia, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between The District of Columbia, appellant, and James T. Wormley, appellee, a judgment was rendered against the said James T. Wormley, and the said James T. Wormley having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said District of Columbia, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said James T. Wormley shall prosecute said writ of error to effect and answer all damages and costs if he fails to make his plea good, then

the above obligation to be void; else to remain in full force and virtue.

JAMES T. WORMLEY. [SEAL.]
By JOHN C. GITTINGS, [SEAL.]
Att'y-in-fact.
BENJAMIN L. WHEELER. [SEAL.]

Sealed and delivered in the presence of—
WM. C. JEWBY,
Witness to Both Signatures.

O K.
A. B. DUVALL.

Approved by—
R. H. ALVEY,
Chief Justice.

[Endorsed:] No. 885. The District of Columbia, appellant, *vs.* James T. Wormley. Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jun- 22, 1899. Robert Willett, clerk.

20 UNITED STATES OF AMERICA, *ss:*

To the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein James T. Wormley is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 22d day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted.
A. B. DUVALL,
For Defendant in Error.

June 22, 1899.

21 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 20, inclusive, contain a true copy

of the transcript of record and proceedings of said Court of Appeals in the case of The District of Columbia, appellant, *vs.* James T. Wormley, No. 885, April term, 1899, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 6th day of July, A. D. 1899.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 17,468. District of Columbia Court of Appeals. Term No., 101. James T. Wormley, plaintiff in error, *vs.* The District of Columbia. Filed July 18th, 1899.